

**UNITED STATES BANKRUPTCY COURT
MIDDLE DISTRICT OF FLORIDA
ORLANDO DIVISION**

In re:

Case No: 6:19-01933
Chapter 7

CAROL A HERTENSTEIN
Debtor(s)

/

AMENDED MOTION TO SELL PROPERTY OF THE ESTATE

Dennis Kennedy, Chapter 7 Trustee (the “Trustee”), by and through his undersigned attorney, hereby gives notice of a proposed sale of property of the estate; moves this Court to enter its order approving the sale of real property of the estate set forth below, moves this Court to enter its order directing that service of any order granting or denying this motion be limited to the debtor, debtor’s attorney, Trustee, attorney for Trustee, United States Trustee, and any other parties to the proposed transaction, any objecting party, and shows:

NOTICE OF OPPORTUNITY TO OBJECT AND FOR HEARING

Pursuant to Local Rule 2002-4, the Court will consider the relief requested in this paper without further notice or hearing unless a party in interest files a response within twenty – one (21) days from the date set forth on the attached proof of service¹, plus an additional three (3) days for service if any party was served by U.S. Mail.

If you object to the relief requested in this paper, you must file a response with the Clerk of the Court at the George C. Young Federal Courthouse, 400 West Washington Street, Suite 5100, Orlando, Florida 32801 and serve a copy on movant’s attorney, Dennis Kennedy, Trustee PO Box 541848, Merritt Island Florida 32954 and any other appropriate persons within the time allowed. If you file and serve a response within the time permitted, the Court will either schedule and notify you of a hearing, or consider the response and grant or deny the relief requested without a hearing. If you do not file a response within the time permitted, the Court will consider that you do not oppose the relief requested in the paper, will proceed to consider the paper without further notice or hearing, and may grant the relief requested.

1. Description of Property:

Property of the estate pursuant to 11 U.S.C. §541(a) includes residential real property located in Lake County, Florida described as follows:

CRESCENT BAY LOT 68 PB 28 PGS 98-100 ORB 1577 PG 0381 according to the map or plat according to Public Records of Lake County, Florida aka 11024 Windchime Cir, Clermont, Florida (the “Property”).

2. Prospective Buyer and Purchase Price:

The proposed purchaser of the Property is Plantinum Properties Orlando LLC. The proposed purchase price is \$7,500.00 US paid at the closing of the sale.

3. Encumbrances and Their Proposed Disposition after Sale:

The Trustee is aware of the following encumbrances against the Property.

Mortgage held by Select Portfolio Servicing LLC in the amount of \$220,288.00. Junior mortgage held by Citimortgage in the amount of \$47,900.00. The sale of the Property is “subject to” the mortgage held by Specialized Loan Servicing LLC and Citimortgage Inc.

There may be other liens or encumbrances that the Trustee is not aware of. To the extent that any undisclosed liens or encumbrances exist against the Property, it is the Purchaser’s responsibility identify any additional liens or encumbrances and to satisfy those liens or encumbrances. The sale of the Property is “subject to” all liens and encumbrances.

4. Real Estate Taxes:

The Purchaser is responsible for all past due and current year real property taxes, if any owed against the Property.

5. Closing Costs.

The Purchaser will pay the closing costs associated with the transfer of the Property.

6. Real Estate Commission.

There is no real estate commission being paid in connection with the proposed sale of the Property.

7. **Sale is "As Is, Where Is" with No Warranties.**

The Property is being sold "as is, where is" with no warranties of any kind "express, implied or otherwise". It is the Purchaser's responsibility to examine title or otherwise identify any and all liens and encumbrances against the Property. It is the Purchaser's responsibility to satisfy all liens and encumbrances against the Property.

The Trustee has not undertaken any due diligence on Property, including any testing pursuant to the American Society for Testing and Materials Standard E1527-00. The Purchaser will be deemed to have conducted all due diligence regarding the Property, including suitability for any purpose, environmental concerns and compliance with any and all federal, state and local laws, rules and regulations.

8. **Request For Authority To Sign Documents Necessary To Close Sale.**

The Trustee requests that this Court authorize him to sign any documents necessary to close the sale that are within her purview and authority as chapter 7 bankruptcy trustee.

9. **State Documentary Stamp Taxes:**

The Purchaser is responsible for the payment of the appropriate and correct amount of State of Florida Documentary Stamp Taxes owed against the Property upon the recording of the Trustee's Deed as set forth in the Florida Statutes Section 201.02 et seq. The Trustee moves this Court to direct/order the Purchaser to pay the correct amount of State of Florida Documentary Stamp Taxes upon recording the Trustee's Deed and provide evidence of such payment to the Trustee for her records.

10. **Competing Bids:**

The Trustee will entertain any higher bids for the purchase of the Property. Such bids must be **in writing** and accompanied by a **Deposit** of one hundred percent (100%) towards the purchase price.

Any higher bid **must be received** by the Trustee at her mailing address listed below no later than the close of business on twenty – one (21) days from the date of mailing as indicated below plus an additional three (3) days for service. If more than one (1) competing bid is received, a telephone auction will occur among the bidders on the earliest date the Trustee can arrange such auction.

The Deposit check should be made to Dennis Kennedy, Trustee and reference the bankruptcy name and number. The Competing Bid and Deposit should be mailed to:

Dennis Kennedy, Trustee
PO Box 541848
Merritt Island Florida 32954

The Trustee reserves the right to request a hearing in order to set bidding procedures if such procedures cannot be agreed upon by the interested parties

11. **F.R.B.P. 6004(g) applies:**

F.R.B.P. 6004(g) states: “An order authorizing the use, sale, or lease of property other than cash collateral is stayed until the expiration of 14 days after entry of the order, unless the court orders otherwise.” Thus, the proposed sale of the Property will occur only after the expiration of the 14 day stay period prescribed by F.R.B.P. 6004(g).

WHEREFORE, the Trustee moves this Court to enter its order as follows: (a) granting this motion; (b) approving the sale of the bankruptcy estate’s interest in the Property as set forth above; (c) determining that the sale of the Property is “subject to” all liens and encumbrances;

(d) determining that the Purchaser is responsible for all past due and current year real property taxes owed against the Property; (e) determining that the Purchaser is responsible for the payment of all closing costs associated with the transfer of the Property; (f) determining that the sale of the bankruptcy estate's interest in the Property is "as is, where is" with no warranties of any kind "express, implied or otherwise"; (g) ordering the Purchaser to pay the correct amount of State of Florida Documentary Stamp Taxes upon the recording of the Trustee's Deed and providing evidence of such payment to the Trustee; (h) authorizing the Trustee to sign the documents necessary to close the sale of the Property; (i) ruling that the fourteen (14) day stay period prescribed by F.R.B.P. 6004(g) applies; (j) limiting service of the order approving the proposed sale of the Property to the debtor, the debtor's attorney, Trustee, counsel for the Trustee, the Purchaser, the Office of the United States Trustee, any other parties to the proposed transaction and any objecting party; (k) retaining jurisdiction to resolve any dispute between the parties that may arise in connection with the sale of the Property and to enforce the terms of the proposed sale, including but not limited to the requirement for the Purchaser to pay the correct amount of State of Florida Documentary Stamp Taxes owed upon the recording of the Trustee's Deed; and (l) for such further relief that this Court deems just and proper.

Dated: June 4, 2019

/s/ Arvind Mahendru
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